

AMENDED IN SENATE JULY 7, 1998  
AMENDED IN SENATE JUNE 30, 1998  
AMENDED IN SENATE JUNE 15, 1998  
AMENDED IN SENATE MAY 12, 1998  
AMENDED IN SENATE JULY 22, 1997  
AMENDED IN ASSEMBLY JUNE 2, 1997  
AMENDED IN ASSEMBLY MAY 22, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

**ASSEMBLY BILL**

**No. 123**

**Introduced by Assembly Member Wildman**

January 14, 1997

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An act to amend Sections 3717 and 3750 of, and to add Sections 3758, 3758.5, 3758.6, and 3759 to, the Business and Professions Code, relating to respiratory care practitioners, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 123, as amended, Wildman. Respiratory care practitioners.

(1) Existing law, known as the Respiratory Care Practice Act, provides that, subject to certain disclosure limitations, members of the examining committee of the Respiratory Care Board, or respiratory practitioners or investigators working on their behalf, may inspect or require reports from hospitals and

other facilities providing respiratory care, and from the respiratory care staff therein, concerning the care, treatment, services, and facilities provided therein, and may inspect patient records with respect to respiratory care.

This bill would provide that the board, or practitioners, investigators, or enforcement staff appointed by the board, may make those inspections and may additionally inspect or require reports concerning the employment of staff providing respiratory care, treatment, or services. The bill would authorize these persons to inspect employment records relevant to an official investigation upon submission of a written request specifying the portion of the records to be inspected. This bill would also remove certain restrictions against disclosure, as specified.

(2) Existing law authorizes the board to order the suspension or revocation of, or the imposition of probationary conditions upon a licensee for any of certain specified causes.

This bill would specify as additional causes, incompetence in the licensee's practice, and a pattern of substandard care.

(3) Existing law authorizes the Respiratory Care Board to take disciplinary action against licensed practitioners.

This bill would require employers of respiratory care practitioners to report the suspension or termination of practitioners for cause, as defined. This bill would subject an employer who fails to submit this information to an administrative fine, as specified. Since the moneys derived from the assessment of the fine would be deposited into the Respiratory Care Fund, which is continuously appropriated, the bill would make an appropriation.

This bill would require licensees with knowledge ~~or reasonable belief~~ that another person has violated any law or regulations administered by the board to report this information to the board in writing and to cooperate with the board by providing further information or assistance as may be required. This bill would also provide for civil immunity under a specified provision of law in connection with the making of any report required under these provisions.

This bill would require employers to report to the board the name and other information concerning the supervisor of a licensee suspended or terminated for cause, and would

require the board, if the supervisor is also a licensee under these provisions, to investigate whether due care was exercised by the supervisor. It would require the employer to report this information about the supervisor to the appropriate licensing board if the supervisor is, instead, a health professional licensed by another licensing board. By adding these new requirements in the Respiratory Care Practice Act for employers of respiratory care practitioners, this bill would expand the scope of an existing crime applicable to the violation of any provision of the Respiratory Care Practice Act, thereby imposing a state-mandated local program.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 3717 of the Business and  
2 Professions Code is amended to read:  
3 3717. The board, or any licensed respiratory care  
4 practitioner, enforcement staff, or investigative unit  
5 appointed by the board, may inspect, or require reports  
6 from, a general or specialized hospital or any other facility  
7 or corporation providing respiratory care, treatment, or  
8 services and the respiratory care staff thereof, with  
9 respect to the respiratory care, treatment, services, or  
10 facilities provided therein, or the employment of staff  
11 providing the respiratory care, treatment, or services,  
12 and may inspect respiratory care patient records with  
13 respect to that care, treatment, services, or facilities. *The*  
14 *authority to make inspections and to require reports as*  
15 *provided by this section is subject to the restrictions*  
16 *against disclosure contained in Section 2225.* Those  
17 persons may also inspect employment records relevant to



1 an official investigation provided the written request to  
2 inspect the records specifies the portion of the records to  
3 be inspected.

4 SEC. 2. Section 3750 of the Business and Professions  
5 Code is amended to read:

6 3750. The board may order the suspension or  
7 revocation of, or the imposition of probationary  
8 conditions upon, a license issued under this chapter, for  
9 any of the following causes:

10 (a) Advertising in violation of Section 651 or Section  
11 17500.

12 (b) Fraud in the procurement of any license under this  
13 chapter.

14 (c) Knowingly employing unlicensed persons who  
15 present themselves as licensed respiratory care  
16 practitioners.

17 (d) Conviction of a crime that substantially relates to  
18 the qualifications, functions, or duties of a respiratory care  
19 practitioner. The record of conviction or a certified copy  
20 thereof shall be conclusive evidence of the conviction.

21 (e) Impersonating or acting as a proxy for an applicant  
22 in any examination given under this chapter.

23 (f) Negligence in his or her practice as a respiratory  
24 care practitioner.

25 (g) Conviction of a violation of any of the provisions of  
26 this chapter or of any provision of Division 2  
27 (commencing with Section 500), or violating, or  
28 attempting to violate, directly or indirectly, or assisting in  
29 or abetting the violation of, or conspiring to violate any  
30 provision or term of this chapter or of any provision of  
31 Division 2 (commencing with Section 500).

32 (h) The aiding or abetting of any person to violate this  
33 chapter or any regulations duly adopted under this  
34 chapter.

35 (i) The aiding or abetting of any person to engage in  
36 the unlawful practice of respiratory care.

37 (j) The commission of any fraudulent, dishonest, or  
38 corrupt act which is substantially related to the  
39 qualifications, functions, or duties of a respiratory care  
40 practitioner.



1 (k) Falsifying, or making grossly incorrect, grossly  
2 inconsistent, or unintelligible entries in any patient,  
3 hospital, or other record.

4 (l) Changing the prescription of a physician and  
5 surgeon, or falsifying verbal or written orders for  
6 treatment or a diagnostic regime received, whether or  
7 not that action resulted in actual patient harm.

8 (m) Denial, suspension, or revocation of any license to  
9 practice by another agency, state, or territory of the  
10 United States for any act or omission that would  
11 constitute grounds for the denial, suspension, or  
12 revocation of a license in this state.

13 (n) Except for good cause, the knowing failure to  
14 protect patients by failing to follow infection control  
15 guidelines of the board, thereby risking transmission of  
16 blood-borne infectious diseases from licensee to patient,  
17 from patient to patient, and from patient to licensee. In  
18 administering this subdivision, the board shall consider  
19 referencing the standards, regulations, and guidelines of  
20 the State Department of Health Services developed  
21 pursuant to Section 1250.11 of the Health and Safety Code  
22 and the standards, regulations, and guidelines pursuant to  
23 the California Occupational Safety and Health Act of 1973  
24 (Part 1 (commencing with Section 6300) of Division 5 of  
25 the Labor Code) for preventing the transmission of HIV,  
26 hepatitis B, and other blood-borne pathogens in health  
27 care settings. As necessary, the board shall consult with  
28 the California Medical Board, the Board of Podiatric  
29 Medicine, the Board of Dental Examiners, the Board of  
30 Registered Nursing, and the Board of Vocational Nursing  
31 and Psychiatric Technicians, to encourage appropriate  
32 consistency in the implementation of this subdivision.

33 The board shall seek to ensure that licensees are  
34 informed of the responsibility of licensees and others to  
35 follow infection control guidelines, and of the most recent  
36 scientifically recognized safeguards for minimizing the  
37 risk of transmission of blood-borne infectious diseases.

38 (o) Incompetence in his or her practice as a  
39 respiratory care practitioner.

40 (p) A pattern of substandard care.

1 SEC. 3. Section 3758 is added to the Business and  
2 Professions Code, to read:

3 3758. (a) Any employer of a respiratory care  
4 practitioner shall report to the Respiratory Care Board  
5 the suspension or termination for cause of any  
6 practitioner in their employ. The reporting required  
7 herein shall not act as a waiver of confidentiality of  
8 medical records. The information reported or disclosed  
9 shall be kept confidential except as provided in  
10 subdivision (c) of Section 800, and shall not be subject to  
11 discovery in civil cases.

12 (b) For purposes of the section, “suspension of  
13 termination for cause” is defined to mean suspension or  
14 termination from employment for any of the following  
15 reasons:

16 (1) Use of controlled substances or alcohol to such an  
17 extent that it impairs the ability to safely practice  
18 respiratory care.

19 (2) Unlawful sale of controlled substances or other  
20 prescription items.

21 (3) Patient neglect, physical harm to a patient, or  
22 sexual contact with a patient.

23 (4) Falsification of medical records.

24 (5) Gross incompetence or negligence.

25 (6) Theft from patients, other employees, or the  
26 employer.

27 (c) Failure of an employer to make a report required  
28 by this section is punishable by an administrative fine of  
29 *not to exceed* ten thousand dollars (\$10,000) per violation.

30 SEC. 4. Section 3758.5 is added to the Business and  
31 Professions Code, to read:

32 3758.5. If a licensee has knowledge ~~or reasonably~~  
33 ~~believes~~ that another person may be in violation of, or has  
34 violated, any of the statutes or regulations administered  
35 by the board, the licensee shall report this information to  
36 the board in writing and shall cooperate with the board  
37 in furnishing information or assistance as may be  
38 required.

39 SEC. 5. Section 3758.6 is added to the Business and  
40 Professions Code, to read:

1 3758.6. In addition to the reporting required under  
2 Section 3758, an employer shall also report to the board  
3 the name, professional licensure type and number, and  
4 title of the person supervising the licensee who has been  
5 suspended or terminated for cause, as defined in  
6 subdivision (b) of Section 3758. If the supervisor is a  
7 licensee under this chapter, the board shall investigate  
8 whether due care was exercised by that supervisor in  
9 accordance with this chapter. If the supervisor is a health  
10 professional, licensed by another licensing board under  
11 this division, the employer shall report the name of that  
12 supervisor and any and all information pertaining to the  
13 suspension or termination for cause of the person licensed  
14 under this chapter to the appropriate licensing board.

15 SEC. 6. Section 3759 is added to the Business and  
16 Professions Code, to read:

17 3759. Pursuant to Section 43.8 of the Civil Code, no  
18 person shall incur any civil penalty as a result of making  
19 any report required by this chapter.

20 SEC. 7. No reimbursement is required by this act  
21 pursuant to Section 6 of Article XIII B of the California  
22 Constitution because the only costs that may be incurred  
23 by a local agency or school district will be incurred  
24 because this act creates a new crime or infraction,  
25 eliminates a crime or infraction, or changes the penalty  
26 for a crime or infraction, within the meaning of Section  
27 17556 of the Government Code, or changes the definition  
28 of a crime within the meaning of Section 6 of Article  
29 XIII B of the California Constitution.

30 Notwithstanding Section 17580 of the Government  
31 Code, unless otherwise specified, the provisions of this act  
32 shall become operative on the same date that the act  
33 takes effect pursuant to the California Constitution.